

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**June 23, 2004**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitaфан** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Nitaфан, Lalwani, Galang, Garcia, Mohsin and Sandhu  
Absent: Giordano  
Staff: Carrington, Fujimoto, Heyden and Rodriguez

**III.  
PUBLIC FORUM**

Chair Nitaфан invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
June 9, 2004**

Chair Nitaфан called for approval of the minutes of the Planning Commission meeting of June 9, 2004.

**Tambri Heyden, Planning and Neighborhood Services Director**, noted that she and Troy Fujimoto's names should be removed from Roll Call since they were not present at the meeting.

**Motion** to approve the minutes with the changes.

M/S: Lalwani/Sandhu

AYES: 5

NOES: 0

ABSTENTIONS: 1 (Nitaфан) – Absent at the June 9, 2004 meeting.

**V.  
ANNOUNCEMENTS**

Ms. Heyden announced that staff is collecting photo ideas for the 2005 City calendar and would need them by July 19, 2004. She also noted that the subcommittee rotation schedule has changed, and the new commissioners for the next three months are Commissioner Galang and Vice Chair Lalwani and alternate member Chair Nitaфан. She also informed that the Commission would need to RSVP for the commissioner's annual recognition dinner by July 9, 2004.

Ms. Heyden noted that there is an article in which the City of Milpitas was profiled for Cisco technology in Cisco's small business magazine and passed it out to the Commission and also noted that the Commissioner's received information in their packet for a free online land use planning fundamentals course being sponsored by the Lincoln Institute of Land Policy. It is a pilot project and they need five volunteers from the state.

**Vice Chair Lalwani** noted that she would attend the Commissioner's recognition dinner.

**Commissioner Mohsin** thanked staff for providing the Cisco IQ magazine and thought it was great that the City of Milpitas was profiled. She also noted that she attended the affordable housing tour on June 11, 2004, which gave her great ideas about various projects in different cities.

**Commissioner Garcia** noted that he would be on a business trip and will not attend the July 14, 2004 Commission meeting.

**VI.  
APPROVAL OF  
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

**Motion** to approve the agenda.

M/S: Lalwani/Galang

AYES: 6

NOES: 0

**VII.  
CONSENT CALENDAR  
Consent Item Nos. 2 and 3**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item No. 2.

There were no speakers from the audience.

**Close Public Hearing**

**Motion** to close the public hearing on Consent Item No. 2.

M/S: Lalwani/Galang

AYES: 6

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 2 and 3.

**\*2 USE PERMIT NO. UP2004-11:** *(Continued from June 9, 2004)* A request to locate telecommunications antennas atop of an existing 95 foot tall light pole and accompanying equipment inside an enclosure at Milpitas High School at 1285 Escuela Parkway, in the R1-6 Zoning District (APN: 026-18-003). Applicant: Jennifer Estes. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

**\*3 'S' ZONE APPROVAL AMENDMENT NO. (SA2004-50) – SIGN PROGRAM:** A request for a sign program for Shapell office building and two retail buildings at the front of the property at 60, 100 and 120 North Milpitas Boulevard (APNs: 028-12-020 & 021), zoned Town Center district (TC). Applicant: Shapell Industries. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

M/S: Lalwani/Galang

AYES: 6

NOES: 0

## VIII. PUBLIC HEARING

### REVOCATION OF USE PERMIT AMENDMENT NO. UA2003-15 (AD2004-

**8):** A request to revoke Use Permit Amendment No. UA2003-15 for live entertainment, including dancing and karaoke, at the Manila Natori restaurant at 579 South Main Street.  
*Applicant: City of Milpitas*

**Troy Fujimoto, Associate Planner,** presented a request to revoke Use Permit Amendment No. UA2003-15 (AD2004-8) for live entertainment, including dancing and karaoke, at the Manila Natori restaurant at 579 South Main Street (APN: 086-11-012), zoned Mixed Use (MXD), and recommended revocation of the Use Permit to City Council.

Vice Chair Lalwani asked if the applicant needs two certificates of occupancy for the restaurant and for live entertainment. Mr. Fujimoto replied that the applicant has only one certificate of occupancy and anytime live entertainment is added, the applicant has to apply for a new certificate so staff can verify that they have satisfied the conditions of approval.

Commissioner Garcia asked what is the status on the trash enclosure and how long will it take for the applicant to get a building permit. Mr. Fujimoto replied that the building permit has been issued and the applicant is working on the trash enclosure.

Commissioner Garcia asked when the building permit expires and Mr. Fujimoto responded, "six months".

Chair Nitafan invited the applicant to speak.

**Marie Asistin, Applicant of 579 S. Main Street,** noted that work has been started on the trash enclosure and the contractor is trying to finish by next week.

Chair Nitafan opened the public hearing.

**Mr. Don Ryan, Vice President of Milpitas Chamber of Commerce,** noted that when Marie joined the Chamber of Commerce she was scared of working with the City, but over time she has worked hard on making her business look beautiful. He thinks the City could count on Marie to complete the project in time.

**Frank De Schmidt, Chamber of Commerce,** asked if it is possible for the Commission to continue this item while giving the applicant more time to finish up the project and at the same time go forward with the revocation process.

**Seton Chow, Owner of Manila Natori,** noted that the reason the project has been delayed is because of money problems. He recalled that when he first submitted the drawings for the garbage enclosure to the City, there were problems with the water and sewer line and the City wanted him to fix these problems. He felt that the City was giving him and the previous owner a hard time and that is why the previous owner left the business.

**Close Public Hearing  
Agenda Item No. 1**

**Motion** to close the public hearing.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

Commissioner Garcia agreed to continue the item for 30 days to see if the enclosure is completed and would like to put a condition that the project automatically goes to Council for revocation if the enclosure is not built. He felt that the City has bent over backwards for the applicant and 30 days will not make a big difference, however, he is against losing the live entertainment aspect of the business. He urges the Commission to hold off on revoking the Use Permit and any penalties that are involved.

Chair NitaFan asked if the public hearing would be open if the item is continued. Ms. Heyden understood the motion as to continue the public hearing and if the applicant has not complied, then the recommendation would be to go to City council for revocation.

Chair NitaFan suggested that the item be continued to the July 28, 2004 meeting.

Ms. Heyden noted that the applicant was cited through the code enforcement process because of the trash enclosure and received the standard notice to abate and was given 30 days to comply, which they did not comply with within this timeframe and therefore they were subject to a fine, and to her knowledge that fine has not been paid. Therefore, the use needs to cease regardless to what is being done, so even though the Commission is continuing the item, the use needs to cease. She also explained that the fine is per citation notice, so since the applicant has not complied, staff will issue another notice of violation, and if they don't comply within that period the fine escalates to two hundred dollars.

Vice Chair Lalwani asked if the applicant could still operate the business if they pay the fine. Ms. Heyden responded that the purpose of the citation process is to gain compliance, so merely paying the fine doesn't gain compliance it just puts you into this treadmill of not reaching the end goal. So even if the applicant pays a fine so it is more than paying the fine, it's also paying the fines that are due from past of lack of activity.

Vice Chair Lalwani asked if the Commission gives them a 30-day extension, can they continue the live entertainment and Ms. Heyden explained that they are still not in compliance and would have to cease operation. Until they comply, they can reinstate their entertainment use.

Ms. Asistin noted that they have two parties planned the upcoming weekend and asked if they have to be canceled. She also noted that she was unaware of the two hundred dollar fine.

Mr. Fujimoto noted that the citation was sent to the restaurant at 579 Main Street; however, it was delivered to Ms. Asistin's niece.

Chair NitaFan noted that that the applicant can continue the restaurant portion of the business, and said it is important for the applicant to comply with policy so that they are able to have live entertainment.

**Kit Faubion, City Attorney**, clarified that since the motion is to continue the public hearing for 30 days, the application should come back to the Commission at the continued hearing, so at that time, the Commission would hear testimony and move forward.

Commissioner Garcia asked if the term “live entertainment” includes karaoke and Ms. Heyden responded, “Yes”.

**Commissioner Sandhu** asked if there would be discussion when the item comes back and Ms. Faubion replied that when the public hearing is continued, the public hearing would be open and you would still have the opportunity to receive advice from staff, and depending upon the circumstance of the applicant and anybody that wants to speak about it. At the close of the public hearing, the commission would then take an action whichever action is appropriate.

Commissioner Garcia noted that there is no choice other than to go along with the notice of abatement, so even though other groups are supporting the applicant to extend the deadline for thirty days without any penalty further, it appears they are making good faith.

Ms. Heyden agreed with Commissioner Garcia and noted that as of June 15<sup>th</sup>, the applicant has a hundred dollar outstanding fine.

Commissioner Garcia asked if the applicant pays the hundred dollars, could they still continue with the live entertainment even though they are in violation. Ms. Heyden replied that the applicant’s use would be suspended until they comply.

Chair Nitafan noted that the Commission has to be consistent in case a similar situation arises in the future.

Commissioner Garcia commented that he enjoys an organization that puts forward a good faith effort, and felt that this applicant was doing just that. He noticed that the outside of the restaurant looks much better.

Chair Nitafan asked staff if there are other options. Ms. Heyden explained that the last option is to continue the public hearing and recommend to city council revocation or suspension or modification to their permits so when the Commission chooses to take up this issue at the next hearing, the Commission will be able to take the proper course of action. She also noted that in the last 12 months there have been many use permits which have been approved for live entertainment and it is a very popular request, and all of those use permits have had to comply with all of their conditions prior to the use being activated.

Mr. Chow still felt that the City was unfair in their process and said that he tried to comply with the City but they couldn’t agree on the trash enclosure.

**Commissioner Galang** is concerned that the applicant will be losing a majority of their business from removing the live entertainment.

Chair Nitafan commented that the Commission has compromised many things and cannot compromise anymore.

**Motion** to continue Use Permit Amendment No. UA2003-15 (AD2004-8) to the July 28, 2004 meeting.

M/S: Garcia/Sandhu

AYES: 6

NOES: 0

## **IX. NEW BUSINESS**

### **2. DISCUSSION ITEM:** Informational discussion of the Religious Land Use and Institutionalized Persons Act (RLUIPA).

**Kit Faubion, City Attorney**, presented a discussion on the Religious Land Use and Institutionalized Persons Act (RLUIPA). She noted that RLUIPA has a big effect on land use throughout the country and noted that a memo was handed out to the Commission providing the relevant portions of RLUIPA and recent case laws about RLUIPA.

Commissioner Garcia asked if there is any case law about a government having compelling reasons, such as health and safety, to have a religious use in a commercial and industrial area. Ms. Faubion noted that she is unaware of anything at this point and it is pretty clear that something like a building code would be a compelling interest so there wouldn't be too much difficulty for a religious use to occupy a building in an industrial area. On the other hand, if you want to condemn a piece of property so that it is to be economically beneficial such as a non profit organization, then it's pretty clear that it wouldn't be allowed, such as the Cottonwood case which was referenced in the Commissioner's packet.

Commissioner Garcia asked if there are any accepted standards for health and safety, on how far apart any assemblies could be from hazardous materials.

Ms. Faubion noted that she is unaware of standards like that, but there could be some and she would have to follow up with the Commission. She noted that hazardous materials in general are very highly regulated at all kinds of levels, and if you wish to have more information, you want to make sure that we cover the various levels, just as a general matter for this particular kind of use.

Commissioner Garcia noted that James Lindsay came up with the idea to map out areas where hazardous materials are in Milpitas, and the areas where the City might not want assemblies of any sort to be located and that would be a good indicator for the Commission to know where are appropriate areas for any assembly usage as opposed to industrial usage.

Commissioner Garcia noted that the Commission and applicants need guidance so that applicants don't go through the time and effort to find properties and find that it is not available. He felt that Mr. Lindsay's idea about drawing circles around hazardous zones where overlapping areas are might not be appropriate for assemblies, however he would like staff to follow up on this.

In regards to the case law study that was described in the memo, Vice Chair Lalwani asked if there was lack of full disclosure and Ms. Faubion noted that in the case study, San Jose Christian College asked for a large facility and then it turned out that more information was needed about the facility. When staff indicated that to them San Jose Christian College decided to back off from submitting the application, and at the same time, were visibly and actively advertising that they did not intend to have 400 students but 1600 students. Staff indicated that there were CEQA issues and that this had to be resolved before a permit was considered. The petition from San Jose Christian college was that they were being burdened by having to provide this additional information and provide a complete application and the court disagreed.

Vice Chair Lalwani said it would be a good idea for staff to flag the areas which cannot be zoned for assembly, because now with this high rate of vacancy, we are seeing office buildings being converted to other uses besides office, like two buildings on Montague court.

Chair Nitafan noted that when he was at the League of California Cities conference, they emphasized that staff would have to analyze an application for an assembly to enter an industrial area and felt that a process needs to be put in place to avoid future litigation. Chair Nitafan also suggested that he would like to see if the ordinance could touch up on this issue to avoid future litigation.

Ms. Faubion noted that staff would look at what other cities are doing in regards to RLUIPA and determine how to appropriately to implement this statute given different land use issues.

Chair Nitafan commented that hopefully the City would avoid any future litigation in regards to religious land use and thanked the City Attorney for all of the information.

There being no further business, the meeting was adjourned at 7:59 p.m. to the next regular meeting of July 14, 2004.

Respectfully Submitted,

James Lindsay  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**X.  
ADJOURNMENT**